



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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1828 L Street, NW
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Washington, DC 20036

JAN 27 2009

RE: MUR 6033 (Ohio Bankers League)

Dear Mr. Kappel:

On July 10, 2008, the Federal Election Commission notified your clients, the Ohio Bankers League and Daniel Conklin, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On January 16, 2009, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe the Ohio Bankers League or Daniel Conklin violated 2 U.S.C. § 441b(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Kasey Morgenheim, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Ohio Bankers League
6 Daniel Conklin

MUR 6033

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8 **I. GENERATION OF MATTER**

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10 This matter was generated by a complaint filed with the Federal Election Commission by
11 Doug Kelly. *See* 2 U.S.C. § 437g(a)(1).

12 **II. FACTUAL SUMMARY**

13 The complaint alleges that the Ohio Bankers League ("the OBL"), Daniel Conklin (an
14 OBL employee), and Stivers for Congress and Wade Steen, in his official capacity as treasurer
15 ("Stivers Committee" or "Committee") violated 2 U.S.C. § 441b(a), a provision of the Federal
16 Election Campaign Act of 1971, as amended ("the Act") and Commission regulations in
17 conjunction with prohibited earmarked contributions solicited by the OBL for the Stivers
18 Committee. The OBL is a trade association for financial institutions that conduct business in
19 Ohio and a non-profit corporation under Ohio law. Daniel Conklin is listed on the Statement of
20 Organization for the Ohio Bankers League Political Action Committee ("the OBL PAC"), a
21 separate segregated fund of the OBL, as custodian of records with the title of "PAC Specialist."
22 Steve Stivers was a candidate in the 2008 election for the 15th Congressional District of Ohio;
23 Stivers for Congress is his principal campaign committee.

24 The complaint's allegations are based on a fundraising invitation that states, "Please join
25 the OBL for an evening with State Senator Steve Stivers Republican Candidate for Congress,"
26 and that the fundraising reception is "conducted in conjunction with the OBL CEO Symposium."
27 The solicitation states that it is "Paid for by Stivers for Congress" and that checks should be
28 made payable to Stivers for Congress. The solicitation directs recipients to return the enclosed

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1 response form and contributions to “Dan Conklin, Ohio Bankers League, 4249 Easton Way,
2 Suite 150, Columbus, Ohio 43219.” The complaint contends that these facts establish that
3 earmarked contributions were directed by the Respondents to the corporate headquarters of the
4 OBL and to the attention of a corporate representative, Daniel Conklin, in violation of the Act
5 and Commission regulations. Complaint at 4.

6 The OBL’s response on behalf of the organization and Daniel Conklin explains that the
7 invitation was not sent by the OBL itself, but instead sent by the OBL PAC to members of its
8 restricted class to advise members that they could send contribution checks to an officer of the
9 OBL PAC for delivery to the Stivers Committee. OBL Response at 2. The affidavit of Jeffrey
10 D. Quayle, Senior Vice President and General Counsel of OBL and the Treasurer of the OBL
11 PAC, provides the basis for the OBL’s response. The affidavit states that Sherran Blair, a former
12 Chairwoman of the OBL, and her husband volunteered to host a small fundraising event for the
13 Stivers campaign in their home on June 3, 2008. Quayle Affidavit (Exhibit 1 in OBL’s response)
14 ¶ 4. According to Quayle, the OBL PAC agreed to print and mail invitations to the event with
15 the understanding that the printing and mailing costs would be paid by the Stivers Committee.
16 *Id.* Mr. Quayle prepared the draft of the invitation, which, in retrospect, he concedes should
17 have been more clearly worded to state that it was from the OBL PAC. Quayle Affidavit ¶ 5.
18 He also concedes that the invitation failed to clarify that the contributions were to be sent to Mr.
19 Conklin in his capacity as an officer of the OBL PAC. The Stivers Committee reviewed and
20 approved the draft without raising any concerns about the text. *Id.*

21 The affidavit further explains that the invitations were mailed to members of the OBL’s
22 restricted class on April 30 and May 1, 2008. *See* Quayle Affidavit ¶ 6. As a service to the
23 members who did not attend the event, the OBL PAC offered to serve as a conduit for

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1 contributions to the Stivers Committee. *Id.* The available information indicates that Conklin and
2 other OBL employees received approximately 10-11 checks of \$250 payable to the Stivers
3 Committee prior to the event. After obtaining a copy of the invitation on the day of the Blair
4 event, the Ohio Democratic Party publicly claimed that the Blair invitation demonstrated that the
5 OBL had made a prohibited corporate contribution to the Stivers Committee. Quayle Affidavit
6 ¶ 7. Thereafter, the OBL PAC, “in an abundance of caution,” opted to forgo its right to act as a
7 conduit for contributions to the Stivers Committee and instead returned the contribution checks
8 to the original contributors and informed them to deliver the checks to the Committee
9 themselves. Thus, the OBL and the OBL PAC did not deliver any checks from members of the
10 restricted class to the Stivers Committee. Quayle Affidavit ¶ 8.

11 The Blair event took place as planned and the Blairs informed the Stivers Committee that
12 food and beverages for the event cost \$475, and the Committee reported that amount as an in-
13 kind contribution.¹ The OBL PAC received a check for the cost of printing and mailing the
14 invitations to the event (\$811) from Stivers for Congress on July 14 or 15, 2008, a copy of which
15 was attached to the OBL’s response. Quayle Affidavit ¶ 8; OBL Response Exhibit 2.

16 **III. ANALYSIS**

17 The Commission finds no reason to believe that the Ohio Bankers League or Daniel
18 Conklin violated 2 U.S.C § 441b(a).

19 The complaint alleges that the OBL, as a corporate entity, solicited prohibited earmarked
20 contributions for the Stivers Committee. Under the Act, corporations are prohibited from
21 making contributions or expenditures in connection with federal elections. 2 U.S.C. § 441b(a).

¹ When holding a campaign-related activity in his or her home, an individual may spend up to \$1,000 per candidate, per election, for food, beverage and invitations for the event without making a contribution. A husband and wife may together spend up to \$2,000 per candidate per election. Any amount spent in excess must be reported by the campaign as an in-kind contribution. 2 U.S.C. § 431(8)(B)(ii); 11 C.F.R. § 100.77.

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1 Corporations are also prohibited from using corporate resources to facilitate the making of
2 contributions to federal candidates or political committees other than through the corporation's
3 separate segregated fund. 11 C.F.R. § 114.2(f)(1). This prohibition extends to earmarked or
4 directed contributions when corporations and their officers, directors or other representatives,
5 acting as agents, facilitate contributions by using corporate or labor resources to engage in
6 fundraising activities. *Id.* An earmarked contribution is one which the contributor directs (either
7 orally or in writing) to, or spends on behalf of, a clearly identified candidate or candidate's
8 committee through an intermediary or conduit. 11 C.F.R. § 110.6(b)(1). A corporation
9 prohibited from making contributions in connection with federal elections may not act as a
10 conduit for an earmarked contribution, nor may an individual acting as a representative of that
11 corporation receive such contributions. 11 C.F.R. §§ 110.6(b)(2)(ii), (b)(2)(i)(A) and (E).
12 Accordingly, the Act prohibits the OBL from using corporate resources in order to solicit and
13 forward earmarked contributions for the Stivers Committee.

14 The solicitation in this matter only references the OBL. While averring that the
15 solicitation was intended to be from the PAC, Jeffrey Quayle, its author, acknowledges that the
16 wording could have more clearly indicated that the solicitation was from the OBL PAC rather
17 than the OBL. However, the complaint does not allege that the solicitation was directed at
18 individuals outside of the OBL's restricted class, nor is there any indication of any corporate
19 involvement in collecting the earmarked contributions. Both Jeffrey Quayle and Daniel Conklin,
20 the recipient of the earmarked contributions, held official positions in the OBL PAC. Thus, the
21 available information indicates that the OBL did not use corporate resources to facilitate the
22 making of contributions to the Stivers Committee.

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1 Unlike a corporation, a separate segregated fund may act as a conduit for an earmarked
2 contribution. 11 C.F.R. §§ 110.6(b)(2)(ii) and 114.3(c)(2)(ii). The Commission's regulations
3 specifically exempt from the definition of prohibited corporate facilitation the solicitation of
4 contributions to a candidate or political committee by a separate segregated fund, and the
5 collection and forwarding of contributions earmarked to a candidate by a separate segregated
6 fund. 11 C.F.R. § 114.2(f)(3)(i) and (ii). Additionally, prohibited corporate facilitation does not
7 include a corporation soliciting contributions to be sent directly to candidates if the solicitation is
8 directed to the restricted class, nor does it include a corporation soliciting earmarked
9 contributions for a candidate that are to be forwarded by the corporation's separate segregated
10 fund, to the extent that such contributions are also treated as contributions to and by the separate
11 segregated fund. 11 C.F.R. § 114.2(f)(4)(ii) and (iii). Thus, the OBL, as a corporation, would
12 have been permitted to solicit contributions earmarked for the Stivers Committee to be
13 forwarded by the OBL PAC, its separate segregated fund, to the extent that the contributions
14 were treated as contributions to and by the OBL PAC. The OBL's response indicates that the
15 OBL PAC, not the OBL itself, originally intended to act as a conduit for the earmarked
16 contributions had the contributions not been returned to the original contributors.

17 Consequently, this matter differs from other matters where the Commission has found
18 reason to believe that corporations violated the Act in connection with corporate facilitation and
19 solicitation of earmarked contributions. *See* MUR 5573 (Westar) (Commission found reason to
20 believe that Westar, a public corporation, violated the Act by facilitating contributions and acting
21 as a conduit for prohibited earmarked contributions).

22 In the present matter, contributions were not solicited outside of OBL's restricted class.
23 Further, although the solicitation directs recipients to return contributions to Daniel Conklin at

1 the OBL, Conklin held an official position with the OBL PAC and is listed as "PAC Specialist"
2 on the OBL PAC's Statement of Organization. Moreover, the 2008 July Quarterly Reports filed
3 by the OBL PAC and the Stivers Committee did not disclose any contributions that appeared to
4 be forwarded from the OBL PAC to the Committee and a sworn affidavit in the OBL response
5 states that the OBL, OBL PAC, and Daniel Conklin did not act as conduits for any contributions
6 to Stivers for Congress. Rather, the PAC returned all contributions received before the event to
7 the contributors, and a Committee representative collected all of the checks at the event. The
8 Commission's regulations require a person who is prohibited from acting as a conduit to return
9 the earmarked contribution to the contributor. 11 C.F.R. § 110.6(b)(2)(iii)(B). Thus, even if the
10 earmarked contributions had been prohibited under the Act, the remedy would have been for the
11 contributions to be returned. By proactively returning the contributions to the contributors, the
12 OBL PAC acted in accordance with the Commission's regulations, thus avoiding any possible
13 violations. Accordingly, there is no reason to believe that the Ohio Bankers League or Daniel
14 Conklin violated 2 U.S.C § 441b(a).

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